

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHARLOTTE E. HARDING

Claimant

VS.

MONFORT OF COLORADO, INC.

Respondent

Self-Insured

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Docket No. 192,546

ORDER

Respondent requested review of the Award dated June 21, 1996, entered by Special Administrative Law Judge Michael T. Harris. The Appeals Board heard oral argument on December 19, 1996.

APPEARANCES

Dale V. Slape of Wichita, Kansas, appeared for the claimant. Stephen J. Jones of Wichita, Kansas, appeared for the respondent.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

The Special Administrative Law Judge awarded claimant permanent partial disability benefits for a 33.5 percent work disability. Respondent asked the Appeals Board to review the following issues:

- (1) Whether claimant sustained personal injury by accident arising out of and in the course of employment between December 1993, and March 9, 1994.
- (2) Whether claimant gave respondent timely notice of accident.
- (3) Nature and extent of disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award entered by the Special Administrative Law Judge should be affirmed.

(1) Persuaded by both claimant's testimony and that from the medical experts, the Special Administrative Law Judge found that claimant sustained personal injury by accident arising out of and in the course of her employment with the respondent. The Appeals Board agrees with that conclusion.

Although claimant readily admitted that she could not identify a specific traumatic event at work that caused her back injury, she did describe her work activities which included stacking heavy boxes of meat and pushing loaded carts which normally required four or five individuals to move. Also, Lawrence R. Blaty, M.D., board certified in physical medicine and rehabilitation, testified as follows when asked if claimant's back injury was causally related to the work she performed for the respondent:

"Based on the information in my notes, her description, what I am aware of her doing at that job, it wasn't just a secretarial position or sedentary position, I can't say that I isolate one particular activity or -- one particular activity that I could attribute to her injury, but I think that the nature of her activities overall and the nature of her job the most consistent cause of her problems that I can see. Now, if you show me that she was a heavyweight wrestler or something and was going all -- doing all these very rough activities outside the job, then I would be more than happy to look at it and if it seems consistent with that type of injury, I will indicate it. But right now, the best thing I see as far as causing those type of problems are the nature of what she was doing at that position."

Dr. Blaty's opinion was the only expert medical opinion regarding causation provided in the record.

The Appeals Board finds claimant honestly believed that she had only strained a muscle on December 19, 1993, when she began to experience symptoms in the right leg. The Appeals Board also finds that it is more probably true than not that claimant sustained

injury by reason of a series of mini-traumas that culminated on her last day of work for the respondent on March 9, 1994. That conclusion is based upon claimant's description of her job duties and her testimony regarding the worsening progression of her symptoms which ultimately included low back pain. Because it appears that claimant sustained injury through the last day of work, March 9, 1994, that date is the appropriate date of accident for this low back injury. See Condon v. The Boeing Co., 21 Kan. App. 2d 580, 903 P.2d 775 (1995).

(2) The Special Administrative Law Judge found that claimant provided respondent with timely notice of accident. The Appeals Board also agrees with that conclusion.

K.S.A. 44-520 requires an injured worker to provide an employer notice of accidental injury within ten days of the incident unless "just cause" is shown which extends the reporting period to 75 days. The Appeals Board finds that statute's notice reporting requirements have been satisfied.

The Appeals Board finds that claimant provided respondent with notice of the accidental injury as it was occurring. The Appeals Board finds that claimant told respondent's plant superintendent, Kelly Moore, on at least two occasions while continuing to work for the respondent that she was experiencing pain in the right leg. The first conversation occurred in December 1993, shortly after the right leg symptoms began and the second conversation occurred in either January or February 1994, when claimant advised Mr. Moore she may need to seek medical treatment because her leg was not improving. Claimant told Mr. Moore that she believed her symptoms were related to her work.

(3) At oral argument, both parties indicated that the Special Administrative Law Judge's finding of a 33.5 percent work disability appeared reasonable. Reviewing the expert medical testimony concerning claimant's tasks and the disparity in claimant's pre-injury and post-injury average weekly wage, the Appeals Board agrees with the Special Administrative Law Judge's analysis and finding.

According to Jacob Amrani, M.D., who treated claimant between October 1994 and January 1995, claimant has lost the ability to perform 17 percent of the work tasks that she performed in the 15-year period preceding the date of accident. That testimony is persuasive and adopted by the Appeals Board. As required by K.S.A. 44-510e, the Special Administrative Law Judge averaged the 17 percent tasks loss with the 50 percent difference in claimant's pre-injury and post-injury wages and determined that claimant had a 33.5 percent work disability which the Appeals Board also finds appropriate upon which to base the award of permanent partial disability benefits.

(4) The Appeals Board hereby adopts the findings and conclusions as set forth by the Special Administrative Law Judge in the Award to the extent they are not inconsistent with the above.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated June 21, 1996, entered by Special Administrative Law Judge Michael T. Harris should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of January 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dale V. Slape, Wichita, KS
Stephen J. Jones, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Michael T. Harris, Special Administrative Law Judge
Philip S. Harness, Director